IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.NOs.913 & 914 of 1993
and
Cross Objection No 102 of 1995

S.R.Subramanian .. Appellant in both appeals and
Respondent in Cr.Obj.No.102/1995
(Defendant)

-vs-

M/s Syndicate Bank,
Shevapet, Salem-2
by it is Branch Manager
Mr.P.Krishnan .. Respondent in both appeals and
Cross Objector in Cross Objection (Plaintiff)

These appeals and Cross Objection are filed against the decree and judgment dated 12.11.1992 in O.S.NO.255 of 1987 and dated 25.2.1993 in O.S.No.267/1987 respectively on the file of the Additional Sub Court, Salem.

For appellant/
respondent : : Mr.R.Subramanian

For respondents/
Cross Objector: : Mr.S.Ramachandran

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JUDGMENT

A.S.No.913 of 1993:

The defendant in O.S.No.255 of 1987 on the file of Additional Sub Court, Salem is the appellant herein.

2.The short facts as projected by the plaintiff in the plaint relevant for the purpose of deciding this appeal are as follows:

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The defendant has borrowed a sum of Rs.5,700/- from the plaintiff/bank on 6.8.1974 and executed a suit promissory note. The said debt was acknowledged by the defendant on

19.7.1977,10.7.1980,1.7.1983 and 30.6.1986. The statement of accounts maintained by the plaintiff/bank for the suit transactions is produced along with the plaint. Since repeated demands, and a notice dated 7.1.1987, were ended in vain , the plaintiff has filed this suit.

3. The defendant in his written statement would contend that the defendant has not borrowed any amount much less Rs.5,700/- from the plaintiff/bank by way of executing a promissory note as alleged in the plaint,. There was also no agreement for payment of any interest. The plaintiff has clandestinely utilized unwritten signed papers of the defendant to make it a promissory note for the purpose of this case. The promissory note relied on by the plaintiff is a forged one. This defendant has not borrowed any loan for the purpose of starting any business. The interest claimed in the plaint is exorbitant. Hence the suit is liable to be dismissed.

4. On the above pleadings, the learned trial Judge has framed five issues and on the basis of documentary and oral evidence, the learned trial Judge has come to a conclusion that the plaintiff has proved his case by way of oral and documentary evidence, and consequently, decreed the suit with interest 15% per annum from the date of promissory note till the date of realisation with costs. by the said findings of the learned trial Judge, the defendant has preferred an appeal in A.S.NO.913/1993.

5. The plaintiff has filed cross objection contending that the plaintiff has claimed interest at 16.5% per annum in the plaint. The trial Court has awarded only interest at 15% per annum. So far enhancement of interest from 15% to 16.5% per annum the plaintiff has preferred Cross objection .

A.S.No.914 of 1993:

6. The defendant in O.S.No.267 of 1987 on the file of Additional Sub Court, Salem is the appellant herein.

6A. The short facts in the plaint relevant for the purpose of this appeal are as follows:

The defendant had borrowed Rs 3,500/- from the plaintiff bank and executed a promissory note on 3.8.1973 . For the above said loan, the defendant had offered 16 bags of PVC Granules as a collateral security. The said debt was acknowledged by the defendant on 10.6.1976,31.3.1979,19.2.1982, and 15.2.1985. Inspite of repeated demands, the defendant has failed to discharge the debt. Hence the suit.

7. The defendant in his written statement would contend that the defendant has not borrowed Rs 3,500/- from the plaintiff on 3.8.1973 under the suit promissory note. The defendant has not created any collateral security for the said loan. There was no letter of acknowledgment was executed by the defendant in favour of the plaintiff as alleged in the plaint. The signature in empty

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forms obtained by the plaintiff were misused and concocted as the suit promissory note and letter of acknowledgment for the purpose of this case. Hence the suit is liable to be dismissed.

8. On the above said pleadings, the learned trial Judge had framed six issues and on the basis of oral and documentary evidence has decreed the suit as prayed for with costs. Aggrieved by the findings of the learned trial Judge, the defendant has preferred this appeal in A.S.NO.914 of 1987.

9. Now the points for determination in these appeal as well in the cross objection are as follows:

1. Whether the suit promissory notes and the letter of acknowledgment thereunder are forged documents as contended by the appellant?
2. To what rate of interest, the plaintiff is entitled under the respective suit promissory notes?

10. Point No.1:

The learned counsel appearing for the appellant in both the appeals would contend that Exs A4, A5 and A6 in O.S.No.255 of 1987 (A.S.No.913/1993) do not relate to the suit transactions. According to the learned counsel,Ex A4 relates to loan A/c No.OSL/GL/10/74 and the same loan account Number has been mentioned in Ex A5,A6 also but in Exs A1 to A3, the said loan account number has not been mentioned. This type of argument has no legs to stand because it is not in dispute that all Exs A1 to A6 contain the signature of the defendant. Ex A1 suit promissory is for Rs 5,700/- dated 6.8.1974. The said debt was acknowledged under Ex A3 (on the back of Ex A1) dated 19.7.1977. Ex A2 is a deed of security executed by the defendant in favour of the plaintiff dated 6.8.1974 ie., on the date of Ex A1 itself. Ex A4 is the acknowledgment letter wherein it has been clearly stated that the said letter of acknowledgment has been executed by the defendant acknowledging the debt incurred by him by way of demand promissory note dated 6.8.1974 /19.7.1977 for Rs.5,700/-. Ex A4 is dated 10.7.1980. Under Ex A4, the defendant has acknowledged that under Ex A1 promissory note amount due on the date of Ex A4 was Rs.15,452,75ps. Ex A5 is another acknowledgment letter of liability for the suit debt. Ex A5 is dated 1.7.1983 for a sum of Rs.23,776.80ps. In Ex A4, the acknowledgment letter dated 10.7.1980 itself, the defendant has mentioned in Ex A1 promissory note dated 6.8.1974 and also the acknowledgment under ExA3 dated 19.7.1977 and executed the letter of acknowledgment of debt.In Ex A4, the loan account number is given as OSL/GL/10/74. The same account number has been furnished in Ex A5 and also in Ex A6. Under such circumstances, in view of the execution of Ex A4 letter of acknowledgment for Ex A1 and EX A3 (renewed) promissory notes, the defendant cannot turn around now and say that Exs A4 , A5 and A6 are not the acknowledgments for Ex A1 debt. The learned trial Judge after an elaborate discussion, has come to the correct conclusion that Exs A5 and A6 are the acknowledgments for Exs A1 and A4. The

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learned counsel for the appellant would contend that in Ex A7 and Ex A8 not even the account number of the defendant's is mentioned. But Ex A7 is the debit slip issued in the name of the defendant and Ex A8 is the chalan for the transfer of Rs 5,700/- from the account of the bank to the account of the defendant. Even though, the account number is not stated in Ex A8, the defendant's name has been mentioned in ExA8 and in Ex A7 the account number of the defendant has been mentioned as 10/74 and Exs A7 and A8 are dated 6.8.1974 ie., the date of Ex A1 promissory note. Under Ex A8, the loan amount of Rs.5,700/- has been ordered to be credited in the O.D.account of the defendant by mentioning his name. So it cannot be said that Ex A7 and Ex A8 are not relating to the suit transactions. The learned counsel appearing for the appellant would attack Ex A9 and Ex 10 on the ground that the statement of accounts furnished under Ex A9 and Ex A10 cannot stand scrutiny for a moment, on the ground that the originals are admittedly by the bank officials were not available and the original documents were already destroyed. So the learned counsel for the appellant would contend that the certificate issued under Exs A9 and A10 that they were the true extracts of the loan ledger and entries there in cannot said to have been made in the ordinary and usual course of business. The learned counsel in support of this contention would point out the evidence of P.W.4, who would depose that Ex A9 is the ledger extract for the loan account No.10/74 for the period from 30.6.1978 to 24.4.1987 and Ex A10 is the ledger extract for the loan account No.10/74 for the period from 6.8.1974 to 22.6.1978 and that the loan ledgers were not maintained in the bank for more than eight years and that Ex A10 was prepared from the balance sheet. Even the said balance sheet was not produced by the plaintiff. He has further deposed that he has no personal knowledge about Ex A10 account. In the cross examination, P.W.4 has categorically admitted that from Exs A9 and A10, it cannot be stated that what was the percentage of interest calculated for the suit loan. Under such circumstances, the amount due on the date of filing of the suit cannot be arrived at on the basis of Exs A9 and A10 copy of ledger extract produced by the plaintiff. Further the plaintiff has not produced any document to show that the prevailing rate of interest was 16.5% per annum as per the Reserve Bank of India's rate of interest over and above 15% per annum interest mentioned in Ex A1. The amount due under the principal inclusive of interest comes to Rs.46,609.20ps but after adding Rs.2.224.20ps, the amount due was shown Rs 49,833.20ps. But the plaint has been valued for Rs.49,833.40ps. The learned counsel appearing for the plaintiff/respondent is not in a position to clarify this discrepancy in statement of accounts. Under such circumstances, we cannot arrive at the amount due on the date of filing of the suit but we have to award interest to the principal amount of Rs.5,700/- which was borrowed by the defendant from the plaintiff bank as evindenced under Exs A1 to A6 documents. Since the plaintiff has proved that the prevailing rate of interest of Reserve Bank of India 16.5%, per annum on the date of the filing of the suit, the plaintiff can claim only 15% interest per annum as per Ex A1. Even though, in the plaint the plaintiff has stated that he has issued the suit notice claiming 16.5% per annum interest from the defendant, he has not exhibited the said suit notice before the

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trial Court. Hence the plaintiff will be entitled to a decree for Rs 5,700/- with 15% per annum interest from the date of promissory note ie., 6.8.1974 till the date of realisation with proportionate costs.

11. In view of my above discussion, the cross objection preferred by the plaintiff in respect of enhancement of interest from 15% to 16.5% per annum will not be maintainable and hence the same is hereby dismissed.

12. As far as O.S.No.267/1987 is concerned, the same defendant has borrowed a sum of Rs.3,500/-from the same plaintiff bank under Ex A2 promissory note dated 3.8.1973. Ex A1 is the loan application. The interest mentioned in Ex A2 is 11.5% per annum. Ex A4 is the transfer chalan showing that the said loan amount of Rs 3,500/- has been transferred from the bank's account to the defendant's account Ex A5 is the debit slip. Ex A10 and EX A11 are the statement of accounts. As I mentioned earlier, P.W.5(O.S.No.267/1987) who speaks about Ex A10 and Ex A11 in O.S.NO.267 of 1987 has also deposed to the fact that he has no knowledge about Exs A10 and A11 statement of accounts. In crystal clear terms, he has deposed that he is not aware as to what was the rate of interest calculated under Exs A10 and A11 for the amount due under Ex A2 promissory note(O.S.NO. 267/1987). Under such circumstances, as in the previous case in this case also, we cannot arrive at a definite conclusion what was the amount due inclusive of principal and interest under Ex A2 (O.S.No.267/1987) promissory note on the date of filing of the suit. But the suit debt has been proved by the plaintiff by examining P.Ws 1 to 5 and marking Exs A1. So the plaintiff will be entitled to Rs 3,500/- with interest 11.5% per annum from the date of promissory note dated 3.8.1973 till the date of realisation. Point No.1 is answered accordingly.

13.Point No.2:

Even though the plaintiff could claim interest at the rate of 16.5% per annum for the respective suit claims in the above said suits, the plaintiff has failed to let in neither documentary nor any oral evidence to prove the same. So as per the suit promissory notes, the plaintiff is entitled to interest at the rate of 15% per annum under Ex A1 promissory note(O.S.No.255/1987) and 11.5% per annum interest under Ex A2 promissory note(O.S.NO.267/1987) for the respective principal amount from the date of promissory note till the date of realisation. Point No.2 is answered accordingly.

14. In fine, the appeal in A.S.No.913 of 1993 is allowed in part and the suit in O.S.No.255 of 1987 is decreed for Rs 5,700/- with 15% per annum simple interest from the date of promissory note ie., 6.8.1974 till the date of realisation with proportionate costs. Time for payment six months. In view of the judgment passed in A.S.No.913 of 1993, the cross objection in Cr.Obj.No.102 of 1995 is dismissed. The appeal in A.S.No.914 of 1993 is allowed in part and the suit in O.S.No.267 of 1987 is decreed for Rs 3,500/- with 11.5%

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per annum simple interest from the date of promissory note ie., 3.8.1973 till the date of realisation with proportionate costs.. Time for payment six months.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sg

To

1.The Additional Sub Judge,
Salem

2.The Record Keeper,
VR Section, High Court, Madras.

+2ccs to Mr.R.Subramanian, Advocate Sr 58052 & 58050

+2ccs to Mr.K.Chandrasekaran,Advocate Sr 57677 & 57676

PV (CO)
km/13.2.

A.S.NOS.913 & 914/1993
AND
CR.OBJ.102/1995

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